It is evident from both the plain language of the Act and its legislative history that Congress chose the Grade B signal intensity standard because it is a quantifiable easily-measured standard based on actual (not predicted) reception at a specific household. Congress did not adopt a predicted service contour standard based on geographic areas. As the court in *CBS, Inc. v. PrimeTime 24* confirmed, "the plain language of the SHVA . . . requires that satellite carriers forego signal-strength testing only at their peril."[37] Accordingly, the Commission cannot defy the expressed intent of Congress and adopt the predicted contour standard proposed by NRTC. It is a fundamental principle of constitutional and administrative law that an administrative agency cannot rewrite a law passed by Congress: "[H]owever reasonable the Commission's assessment, we are not at liberty to release the agency from the tie that binds it to the text Congress enacted."[38]

Not only is NRTC asking the Commission to engraft onto the statute a new and different eligibility standard, NRTC also suggests that the Commission redefine the type of consumer receiving antenna required by the Act. The Act defines an "unserved household" as one that cannot receive a measured Grade B signal with a "conventional *outdoor rooftop* receiving

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[37]*CBS, Inc. v. PrimeTime 24* at 18.

[38]*See Nat. Ass'n of Reg. Util. Comm. v. FCC*, 880 F.2d 422, 428 (D.C. Cir. 1989). *See also, Backcountry Against Dumps v. EPA*, 100 F.3d 147, 150 (D.C. Cir. 1996) (rejecting agency's attempt to rewrite statute and thus categorize Indian tribes as a "state" rather than a "municipality"); *Indiana Michigan Power Co. v. Dep't of Energy*, 88 F.3d 1272, 1276 (D.C. Cir. 1996) (criticizing agency's treatment of statute as "not an interpretation but a rewrite").

antenna."[39] The statute clearly specifies the kind and type of antenna that is required and does not give the Commission (or any other administrative agency) authority to ignore or revise it.

NRTC is asking the Commission to adopt a standard requiring "readily available, affordable equipment."[40] While it is not clear what equipment NRTC considers to be "readily available" or "affordable," it is clear that NRTC's proposed language would not require an *outdoor rooftop* antenna. The Commission cannot write out of the statute the "outdoor rooftop" antenna requirement. As federal courts have repeatedly held, "the Commission is without authority to alter Congressional mandates."[41]

B. The Act Incorporates And Adopts The Commission's Existing Grade B Signal Intensity Standards

Contrary to NRTC's argument, Congress did not intend for the Commission to redefine for purposes of the SHVA the intensity signal level required to be classified as a signal of "Grade B intensity." The inclusion in the statute of the term "as" plainly suggests that Congress intended to incorporate and adopt the Commission's *then existing* Grade B signal definition. If Congress had intended for the Commission to redefine and rewrite "Grade B intensity" for purposes of the Act, it would have used the phrase "*to be*" defined by the Federal Communications Commission, rather than the phrase "as" defined by the Commission.

The Act's legislative history confirms that Congress intended to incorporate and adopt the Grade B signal intensity standards then existing in the Commission's regulations. A Committee

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[39]17 U.S.C. §119. (Emphasis added.)

[40]NRTC Petition at 19.

[41]*See, e.g., Southwestern Bell Corp. v. FCC*, 43 F.3d at 1520.

report accompanying the Act defines an "unserved household" as a "household that with respect to a particular network, (A) cannot receive, through the use of a conventional outdoor antenna, a signal of Grade B intensity (as defined by the FCC, *currently* in 47 C.F.R. Section 73.683(a)). . . ."[42] The use of the term "currently" confirms that Congress intended to adopt the Commission's specifications for Grade B intensity as they existed at that time.

Moreover, there is *no* evidence in the text of the Act or its legislative history to suggest that Congress intended to authorize the Commission to change the signal intensity level of a Grade B signal for purposes of the Act. Had Congress intended to grant to the Commission the authority to redefine the "Grade B signal" standard, it would have expressly directed the Commission to initiate a rulemaking proceeding for that purpose.[43] Interestingly enough, Congress did, in fact, direct the Commission to take such action on a separate topic. The Act expressly directed the Commission to undertake an inquiry and rulemaking proceeding on the feasibility of imposing syndicated exclusivity rules on satellite carriers.[44] Had Congress intended for the Commission to redefine the intensity level of a Grade B signal, it would have directed the Commission to implement a rulemaking proceeding to do so. Congress did not do so in 1988 when the Act was adopted, nor did it do so in 1994 when the Act was amended.

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[42]H.R. Rep. No. 100-887 (II) at 26. (Emphasis added.)

[43]NRTC contends that the fact Congress did not specifically prohibit the Commission from redefining the term "Grade B intensity" for purposes of the SHVA supports the notion that the Commission can change the term. NRTC Reply at 8. We disagree. Congress correctly assumes that agencies cannot and will not exceed their delegated authority. Accordingly, there was no reason for Congress to expressly forbid the Commission from redefining the terms of the SHVA because the Commission has never been delegated the authority to do so.

[44]H.R. Rep. No. 100-887 (II) at 26.

The recent federal court ruling in the ABC case is dispositive of the question whether Congress intended to codify the Commission's existing Grade B signal intensity standards. The court there held:

> "Although Section 73.683(a) concededly was drafted with other purposes in mind, *Congress can clearly adopt by reference, in whole or in part, any portion of the Code of Federal Regulations which it considers relevant in defining a new statutory term. It is apparent that Congress has done so here.* SHVA's reference to 'an over-the-air signal of Grade B intensity (as defined by the Federal Communications Commission)' most naturally refers to the dbu's required for a signal of Grade B strength for each particular channel."[45]

Accordingly, there can be no question that the signal strength standards in Section 73.683(a) have been codified for purposes of the Act and are not subject to revision by the Commission.

NRTC contends that because Congress did not incorporate the *specific* language of 47 C.F.R. §73.683(a) into the statute, it did not incorporate and "freeze" the then existing Grade B signal intensity standards.[46] We disagree. Congress clearly can incorporate an administrative regulation by *reference* to the regulation, and that is exactly what Congress did here. "If the intent of Congress is clear, that is the end of the matter, for the court, as well as the agency must

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[45]*ABC, Inc. v. PrimeTime 24* at 13. (Emphasis added.)

[46]NRTC Reply at 11. By using the words "frozen" and "in perpetuity," the NRTC seems to be implying that it would be unusual for Congress to permanently define a statutory term. Of course, nothing could be further from the truth. Countless federal statutes contain statutorily-defined terms and Congress intends these definitions to be fixed (or "frozen") because they are part of the statute. Statutes, and defined statutory terms, are "frozen" because this permanence allows the public to understand the law and the government to enforce it.

give effect to the unambiguously expressed intent of Congress."[47] As the court in *ABC, Inc. v. PrimeTime 24* held, "Congress can clearly adopt by reference, in whole or in part, any portion of the Code of Federal Regulations which it considers relevant to defining a new statutory term" and "[i]t is apparent that Congress has done so here."[48]

NRTC cites two cases in support of its argument that Congress did not intend to "freeze" the then existing Grade B intensity standards for purposes of the Act: *Lukhard v. Reed*, 481 U.S. 368 (1987) and *Helvering v. Wilshire Oil*, 308 U.S. 90 (1939). In both cases, the Supreme Court addressed the issue whether an administrative agency could revise its interpretation of an undefined statutory term used in a statute administered by that agency after Congress passed an amendment to the statute using the term. In other words, the Court addressed the issue whether by enacting legislation using an undefined term with a particular administrative interpretation, Congress enacted that regulatory interpretation into law. In both cases, the Court found that Congress did not intend to enact the regulatory interpretation into law. Accordingly, the agency's reinterpretation of the term was permitted because it was not inconsistent with Congressional intent.[49]

Although the NRTC relies heavily on these cases, they are irrelevant to the issue now before the Commission for three reasons: First, the terms at issue in *Lukhard* and *Helvering* were ambiguous terms purposely left *undefined* by Congress.[50] In contrast, Congress has specifically

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[47] *Chevron USA Inc. v. Nat. Resources Defense Council*, 467 U.S. 837, 842 (1989).

[48] *ABC, Inc. v. PrimeTime 24* at 13.

[49] *Lukhard*, 481 U.S. at 378; *Helvering*, 308 U.S. at 100.

[50] *Id.*

defined the term "Grade B intensity" for purposes of the SHVA by reference to the Commission's rules.[51] Thus, unlike in *Lukhard* and *Helvering,* there is no question whether Congress enacted a particular definition into law. As the court in the ABC case expressly held "[i]t is apparent that Congress has done so here."[52]

Second, in *Helvering* and *Lukhard,* the issue was whether an agency could redefine terms contained in a statute *administered by that agency.* An administrative agency has familiarity with and expertise concerning the statutes it is entrusted to administer and may interpret those statutes. In that circumstance, an agency's interpretation of those statutes is entitled to deference.[53] However, an agency does not have authority to interpret a statute it is not responsible for administering. Because the Commission is not authorized to administer the copyright laws, it is without authority to interpret the Copyright Act.[54] NRTC Reply, Appendix at ¶14.[55]

Finally, in *Lukhard* and *Helvering*, the Court allowed the agency's interpretations because they were consistent with Congressional intent.[56] The interpretation of "Grade B" proposed by

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[51]*ABC, Inc. v. PrimeTime 24* at 13 (holding that "Congress can clearly adopt by reference, in whole or in part, any portion of the Code of Federal Regulations which it considers relevant to defining a new statutory term . . . [i]t is apparent that Congress has done so here.").

[52]*Id.*

[53]*Chevron,* 467 U.S. at 844-45.

[54]NRTC argues that the Commission "does not need delegated authority to conduct a rulemaking to define and clarify its own rules."

This argument, however, mischaracterizes the relief requested by the Petition. The NRTC does not seek clarification of the "Grade B intensity" standard as it is used in Commission regulations. Rather, it is asking the Commission to define this term *solely* for purposes of the SHVA. Accordingly, the NRTC is asking the Commission to rewrite a federal copyright statute--something the Commission has absolutely no authority to do.

[56]*Lukhard,* 481 U.S. at 378-79; *Helvering*, 308 U.S. at 100.

the NRTC is wholly inconsistent with the plain, unequivocal intent of Congress in enacting the Act. Moreover, Congress and the courts have specifically stated that the SHVA was written to create a narrow, limited compulsory license for satellite carriers. The standard proposed by NRTC would result in expansive compulsory copyright privileges. It would undermine the integrity of the copyright local network stations have in their programming and would ultimately result in the dismantling of the network/affiliate system of free, high quality, over-the-air television--a system Congress explicitly sought to preserve and protect. "[A]dministrative constructions of [a] statute . . . that are inconsistent with the statutory mandate or that frustrate the policy that Congress sought to implement" must be "reject[ed]."[57]

C. Freezing The Definition Of Grade B Intensity In The Act Does Not Deprive The Commission Of Any Flexibility

NRTC claims that unless the Commission can redefine the term "Grade B intensity" solely for purposes of the SHVA, the agency will be "handcuff[ed] forevermore to a 1988 definition of its rules."[58] It is a specious argument. When Congress adopted the Commission's Grade B standard in the SHVA, it did not "handcuff" the Commission to this definition for other regulatory purposes. The Commission is free to amend its Grade B signal standard at any time for telecommunications regulatory purposes.

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[57]*FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 32 (1981).

[58]NRTC Reply at 7.

D. The Commission Does Not Have The Authority To Administer The Act

NRTC claims that the Commission has a "responsibility" to interpret the Act because it is the expert regulatory agency in "telecommunications matters."[59] The Petition states, "Congress did not micro manage this aspect of the implementation of the SHVA. It relied on the expert agency to carry out the goals of the legislation."[60] NRTC misperceives the jurisdiction and authority of the Commission. The SHVA is a copyright statute, and Congress has not delegated any authority to the Commission to interpret copyright law or implement the Act. The expert agency in this matter, and the agency that has been chosen by Congress to administer copyright law, is the Copyright Office, not the Commission.[61] Even the Copyright Office, however, is not free to change the Congressional policy reflected in the SHVA. This is so because Congress struck the policy balance itself. Congress, plainly, did not intend to delegate the issue of how to define an "unserved household" to *any* administrative agency--Congress defined the term expressly.

Moreover, even should the Commission decide to redefine the term "Grade B intensity" as used in the Act, its redefinition and interpretation would not be entitled to deference by a court later called upon to enforce the Act. NRTC's assertion that "[t]he FCC--not a Florida District Court--should define Grade B for purposes of the SHVA"[62] is flatly wrong. The courts--not the

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[59]NRTC Reply at 4.

[60]NRTC Reply at 11.

[61]NRTC acknowledges that the Copyright Office "has been limited in its statutory authority to address the . . . 'unserved household' and 'Grade B' restrictions of the SHVA." NRTC Petition at ii. It is irrational to suggest Congress would give the Commission more authority to interpret the terms of the SHVA than the agency called upon by Congress to administer it.

[62]NRTC Petition at 15.

Commission--enforce the nation's copyright laws. The basis of any court's deference to an agency interpretation of a statute is the agency's familiarity with and expertise concerning *statutes it is entrusted to administer.*[63] "When an agency interprets a statute other than that which it has been entrusted to administer, its interpretation is not entitled to deference."[64]

Because the Commission has no familiarity with nor expertise concerning the SHVA, the federal courts are the appropriate forum for construing the statute and applying conventional tools of statutory construction.

III. There Is No Legitimate Public Policy Reason To Rewrite The Grade B Standard

Not only is the Commission without authority to rewrite the Act's definition of "Grade B intensity," there is absolutely no legitimate public policy reason for it to do so. NRTC urges the Commission to rewrite the definition of "unserved household" because as written, the standard is "anticompetitive" and enforcement of the current law will result in numerous satellite subscribers losing access to network programming.[65] As shown below, neither of these purported public policy justifications is valid.

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[63]*Chevron*, 467 U.S. at 844-45.

[64]*See Illinois Nat. Guard v. Fed. Labor Relations Authority*, 854 F.2d 1396, 1400 (D.C. Cir. 1988); *See also, NJ Air Nat. Guard v. Federal Labor Relations Authority*, 677 F.2d 276, 286 n.6 (3d Cir. 1982).

[65]NRTC Petition at 9.

A. A Rewrite Of The Grade B Standard Will Not Foster Competition In The MVPD Market

NRTC urges the Commission to redefine the "Grade B standard" adopted by Congress in order to "promote competition in the provision of video programming services and to maximize consumer choice."[66] The argument that the SHVA should be rewritten to foster competition between MVPD providers demonstrates a fundamental misunderstanding of the Act and its purpose. The SHVA was never intended to foster competition between cable operators and satellite carriers. This is a copyright statute--not a telecommunications policy statute. The SHVA reflects a fundamental policy decision by Congress to protect the copyrights local stations have for distribution of their networks' programs in their local markets and to preserve the free, local, over-the-air national network/local affiliate distribution system. Rewriting the Act as proposed by NRTC will not enhance competition between satellite and cable providers, but rather, will eviscerate the Act and undermine and ultimately dismantle the national network/local affiliate distribution system--a system that Congress has noted "has served the country well."[67] The demise of the "free" over-the-air national network/local affiliate distribution system would result in consumers having fewer, not more, programming choices. Indeed, those consumers who cannot afford to pay for a broadcast network service will have *no choice at all!*

The NRTC claims, without support, that the "unserved household" definition in the SHVA "frustrate[s] the ability of the satellite industry to compete effectively against the cable industry." The assertion that satellite carriers are unable to compete with cable is belied by the economic

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[66]NRTC Petition at 2.

[67]H. Rept. 100-887 (II) at 20.

success of the satellite industry. Comments filed with the Commission by satellite carriers and findings by the Commission during the Commission's 1997 Annual Assessment of the Status of Competition in the Markets for the Delivery of Video Programming reflect that DBS is a thriving industry that is presently experiencing dynamic growth. In that proceeding, the Satellite Broadcasting and Communications Association of America ("SBCA") pointed out to the Commission that satellite subscribership grew at a rate of 6,088 per day in 1997, up from 4,932 per day in 1996 and 2,959 per day in 1995.[68] During the twelve-month period from May 1996 and May 1997, DirecTV alone added 1.05 million subscribers.[69] One industry analyst predicted, "[t]here's going to be some form of dish on probably 80% of the homes in America in 10 years, probably less."[70] The SBCA attributed the "sharp increase" in satellite subscribership to "the popularity and ease of availability of DBS" and acknowledged that "*DBS is becoming increasingly the system of choice for consumers who want the programming and diversity at the competitive value that the service providers offer.*"[71] DirecTV acknowledged to the FCC that "consumer . . . acceptance of DBS as the designated competitor to cable has been born out by . . . subscriber data. . . ."[72]

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[68]SBCA Comments at 5-6 in Docket No. 97-141 and the Commission's *Fourth Annual Report, In the Matter of the Status of Competition in Markets for the Delivery of Video Programming*, CS Docket No. 97-141, released Jan. 13, 1997, at 37 *et seq.*

[69]*Id.*

[70]National Cable Television Association Comments at 7 in CS Docket No. 97-141 (*citing The Dish on Satellite TV*, San Francisco Examiner and Chronicle, Feb. 5, 1995).

[71]*Id.* at 9. (Emphasis added.)

[72]SBCA Comments at 9-10.

Contrary to NRTC's claim that satellite carriers cannot compete with cable without "offering duplicating broadcast network signals," both DirecTV and EchoStar report record subscriber growth every month of this year.[73] Overall, the satellite industry now has some 9.3 million subscribers and experts predict it will likely hit 10 million before the year is out and 15 million by 2001.[74]

Given the unqualified economic success the satellite industry is enjoying, it is difficult to understand exactly what NRTC is complaining about. Perhaps the best evidence that the SHVA's "unserved household" restriction has not impaired the satellite industry's ability to compete effectively with cable is reflected in DirecTV's candid acknowledgment that virtually *one-half (43%) of its subscribers are former cable subscribers!* [75]

Satellite service is enjoying an unprecedented level of popularity with consumers. In its video competition report, the Commission stated:

> "According to a Nielsen Media Research survey, on a scale of one to five (with five being the most satisfied), 80% of DBS subscribers rate overall satisfaction with their satellite service as a four or a five. By comparison, 45% of cable subscribers rate overall satisfaction with their cable service as a four or a five."[76]

While the notion that satellite carriers cannot compete effectively with cable has become politically fashionable in Washington, it is simply not borne out by the facts. NRTC's argument that satellite carriers cannot compete with cable because satellite carriers cannot deliver

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[73]Price Colman, *Sky's No Limit For SBCA*, Broadcasting and Cable, July 20, 1998, at 58.

[74]*Id.* and *Fourth Annual Report*, CS Docket No. 97-141, at 38.

[75]DirecTV Comments in CS Docket No. 97-141 at 7.

[76]*Fourth Annual Report* in CS Docket No. 97-141 at 38.

duplicating broadcast network programming from a *distant* network station to subscribers who can receive the *very same* network programming from a *local* network station is, on its face, an illogical and irrational assertion. Cable systems are required by the Commission's rules to delete duplicating network station programming from distant network stations. How, then, if it may be asked, are satellite carriers placed at a competitive disadvantage by a requirement that they, too, protect the program exclusivity of local network stations? The only disadvantage satellite carriers have is that they cannot, under the Act, deliver *local* network stations--a disadvantage that Congress can eliminate if it would amend the Act and adopt a local-to-local provision. Local-to-local legislation with regulatory requirements comparable to those of cable would give the satellite and cable industries copyright and regulatory parity--a result clearly in the public interest.

NRTC's competitive hardship argument is belied to a great extent by statements satellite carriers are making to their subscribers and potential subscribers. For example, Exhibit D, contains a DirecTV and USSB advertising brochure circulated in a national magazine. The brochure contains questions and answers about satellite service--all of which are designed to demonstrate the ease with which satellite subscribers can secure access to broadcast programming. Here's an example:

> Question: "I still want to watch my local channels. Is that a problem if I have the DSS system?"
>
> Answer: "*No problem.* With the touch of a button on your remote, you can switch over from the DSS system to your local stations. Ask your retailer to suggest the best indoor or outdoor antenna to receive your local channels. Recent technology has made antenna quality better than ever. And remember, with an antenna, *you get your local channels for free.*" (Emphasis added.)

Exhibit E contains an advertisement by U.S. Satellite Broadcasting with the following statement:

> "Contrary to what you may have heard, the 18" DSS® system has always been fully compatible with local channels offering consumers a *seamless* way to enjoy their local programming." (Emphasis added.)

While NRTC is arguing to the Commission that unless it is permitted to duplicate the network programs of local stations it will be unable to compete with cable, its associate, DirecTV, is proclaiming that the "quality" of outdoor antennas is "better than ever" and that with the mere "touch of a button" broadcast network programming can be obtained in "seamless" fashion from a local station "for free." The hypocrisy is self-evident.

B. A Weakening Of The Act's Network Program Exclusivity Provisions Would Destroy The Free, Over-The-Air Television Industry

The adoption of NRTC's proposed contour standard would conflict with the stated Congressional policy objective of preserving "free," universally available, over-the-air television for those who cannot afford to pay. Congress recognized and acknowledged that the indiscriminate transmission by satellite carriers of duplicating broadcast network programming from distant network stations, if not checked, would undermine the economic foundation of and ultimately dismantle the national network/local affiliate distribution system. The rates paid by local advertisers for local commercials, the rates paid by national advertisers for national commercials and the compensation paid to local affiliates by their networks are all a function of the size of each affiliate's local viewing audience. The correlation between a television station's viewing audience and its advertising rates is direct and immediate. That the importation of

duplicating programming will destroy the economic foundation of local broadcast service is a bedrock principle of the Commission's broadcast regulatory policy. That policy is reflected in the Commission's longstanding network non-duplication and syndicated exclusivity rules for the cable television industry.[77] The Commission has stated the economic consequences succinctly:

> "Diversion imposes economic harm on local broadcasters. . . . A drop even a single rating point may represent a loss of ⅓ to ½ of a broadcaster's potential audience. Audience diversion translates directly into lost revenue for local broadcasters.[78]

The Commission repealed its cable television syndicated exclusivity rules in 1980.[79] Acknowledging that it had failed to appreciate the importance of these rules, it reinstated the rules in 1988, observing:

> "The reasoning that shaped the 1980 decision to repeal the syndicated exclusivity rules was flawed in two significant respects. First the Commission justified the rules' repeal based on an analysis of how their repeal or retention would affect particular competitors, rather than competition itself, in the local television distribution market. We now recognize that the focus of our inquiry was misdirected to the extent that it examined the effects of repeal or retention on individual competitors rather than on the manner in which the competitive process operates. Second, the Commission failed to analyze the effects *on the local television market* of denying broadcasters the ability to enter into contracts with enforceable exclusive exhibition rights when they had to compete with cable operators who could enter into such contracts. . . . The incomplete 1980 analysis led the Commission to

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[77]47 C.F.R. §§76.92 et seq. and 76.155 et seq.

[78]Report and Order Re Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity In The Cable and Broadcast Industries, 53 FR 27167, 64 RR 1818 (1988) at ¶41. Note: This Order contains an exhaustive discussion of the relationship between the cable compulsory license created by the Copyright Act of 1976 and the Commission's broadcast/cable television regulatory policy.

[79]*Syndicated Exclusivity*, 79 FCC2d 663 (1980).

> mischaracterize the role that exclusivity rules play in the functioning of the local television market."[80]

The Commission should not make the same mistake again.

In short, redefining the "Grade B standard" as proposed by NRTC will not increase consumer choice but rather will destroy free television leaving many Americans with no choice at all. The Commission should not, under the guise of "promoting competition," destroy the national network/local affiliate distribution system which Congress and the Commission have consistently sought to preserve.

C. No One Will Be "Disenfranchised" By Enforcement Of The SHVA

NRTC states *repeatedly* that "[l]iterally millions of satellite consumers are threatened with termination of network service as a result of one court's interpretation of the 'unserved

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[80] *Program Exclusivity in the Cable and Broadcast Industries*, 3 FCC Rcd 5299, 64 RR2d 1818, 1828 (1988), *on recon.*, 4 FCC Rcd 2711 (1989), *aff'd sub. nom., United Video, Inc. v. FCC*, 890 F.2d 1173 (D.C. Cir. 1989).

household' restrictions of the SHVA."[81] That is not true. NRTC's loose hyperbole mischaracterizes the nature and effect of the Miami court's decision.

Enforcement of the Miami court's injunction will result in the termination of *distant* network service only to those who are *illegally* receiving it. Subscribers who, in fact, cannot receive a measured signal of Grade B intensity will continue to be eligible to receive distant network service by satellite, just as they have always been. Moreover, those satellite subscribers whose illegal reception will be terminated by enforcement of the law, will *not* lose access to broadcast network services. By definition, subscribers who have been illegally provided distant network service are able to receive at least a Grade B signal off-the-air from a *local* network affiliate. Therefore, those subscribers will continue to receive network service--and receive it for free.

In addition, aside from whether a subscriber is eligible for satellite service under the Act, there are 10,838 cable systems passing more than 97% of the nation's homes--all of which deliver

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[81]NRTC Petition at ii; *see also* at iii ("disenfranchisement of countless rural satellite subscribers"); *Id.* at 1 ("literally millions of rural consumers may soon by disenfranchised"); *Id.* at 2 ("[m]illions of consumers . . . may soon be disenfranchised"); *Id.* at 9 ("pending Federal Court decisions interpreting the SHVA . . . will soon result in the loss of network service by satellite to huge numbers of satellite subscribers"); *Id.* at 14 ("massive court-ordered disconnections"); *Id.* at 15 ("consumers across the country are disenfranchised *en masse* from receiving network service" (emphasis in original)); *Id.* at 17 ("termination of satellite service to millions of subscribers"); *Id.* at 18 ("imminent disenfranchisement of millions of satellite consumers"); NRTC Reply at 3 ("imminent disenfranchisement of more than a million satellite consumers"); *Id.* ("the 1,000,000-plus satellite subscribers across the country . . . facing imminent termination of network service"); *Id.* at 5 ("more than 1,000,000 subscribers across the country will soon be cut-off from receiving network satellite service"); *Id.* at 12 (same); *Id.* ("imminent disenfranchisement of more than one million satellite consumers"); NRTC Reply, Appendix at ¶13 ("terminating service to millions of subscribers" and "massive terminations across the country").

broadcast network programming.[82] There are 96,915,100 television households in the country.[83] Therefore, at most, there are fewer than 2.9 million television households that are not passed by cable. However, there are 5.1 million subscribers to the four DBS providers,[84] and, in addition to DBS subscribers, there are approximately 3 to 4 million other home satellite dish users.[85] Therefore, even assuming that *every* household that is not passed by cable is a satellite customer,[86] the vast majority of these satellite customers could still receive *local* network signals from their local cable provider.

In short, it is patently obvious that enforcement of the statutory terms of the SHVA will not result, as NRTC contends, in the "disenfranchisement" of network service from anyone.

Subscribers have been duped into subscribing to satellite service by unscrupulous satellite carriers that have ignored a law they did not like and one they consciously chose to violate. NRTC subscribers, many of whom have been led to believe that they are lawfully receiving broadcast network programming by satellite, are innocent victims of NRTC's unlawful and unethical business practices--just as are the networks and local network affiliates whose copyrighted programs are being stolen. In the interest of consumers and copyright holders whose

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[82]66 Television and Cable Factbook (1998), at I-96; 1998 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, *Notice of Inquiry*, FCC 98-37 (released Mar. 13, 1998) at ¶26.

[83]66 Television and Cable Factbook (1998) at C-55.

[84]*Fourth Annual Report* in CS Docket No. 97-141 at ¶55.

[85]*Id.* at ¶69.

[86]In fact, the bulk of the customers of PrimeTime 24 and its distributors are urban and suburban and virtually all of them *are* passed by cable.

rights have been violated, we urge the Commission to direct its attention to NRTC's unfair, deceptive and anticompetitive trade practices.

IV. Conclusion

For the reasons stated herein, we request the Commission to dismiss NRTC's Petition.

Respectfully submitted,

THE NETWORK AFFILIATED STATIONS ALLIANCE

By _____
Wade H. Hargrove
Kathleen M. Thornton
BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
First Union Capitol Center
Suite 1600 (27601)
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Counsel for the ABC Television Affiliates Association

By _____
Kurt A. Wimmer
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W. (20004)
Post Office Box 7566
Washington, D.C. 20044-7566
Telephone: (202) 662-6000
Counsel for the CBS Television Network Affiliates Association

By _____
Antoinette Cook Bush
David H. Pawlik
SKADDEN ARPS SLATE MEAGHER & FLOM
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
Telephone: (202) 371-7000
Counsel for the NBC Television Affiliates Association

EXHIBIT A

PRIMETIME 24'S ADVERTISEMENTS

Boxing

Professional

Boxing PSS F1, 14.

Boxing GMAF A1, 16.

Frank Bruno vs. Oliver McCall HBO-E

Fight Night at the Great Western Forum PRMW F1, 22.

Frank Bruno vs. Oliver McCall HBO-W

Roy Jones Jr. vs. Vinny Pazienza

Roy Jones Jr. vs. Vinny Pazienza

Fight Night at the Great Western Forum F1, 12.

Roy Jones Jr. vs. Vinny Pazienza

Oscar De La Hoya vs. Genaro Hernandez

Roy Jones Jr. vs. Vinny Pazienza

Fight Night at the Great Western Forum

Fight Night at the Great Western Forum

Boxing PSS F1, 14.

7:30p Prime Champ. Series ATS E4, 22.
8:00p Prime Champ. Series MSGX F4, 8. PRMT E2, 21.
9:00p Boxing ESPN E4, 8

7:00p Prime Champ. Series SCHPC F1, 4. Roy Jones Jr. vs. Vinny Pazienza BMP A1, 8.
8:00p Boxing GMAF A1, 16.

11:00p Fight Night at the Great Western Forum
11:30p Fight Night at the Great Western Forum
12:00a Fight Night at the Great Western Forum ATS E2, 22
3:00a Fight Night at the Great Western Forum PRMW F1, 16.

9:00p Boxing HBO-E E4, 16
12:00a Boxing HBO-W E1, 21.
4:00a Prime Champ. Series PSS F1, 16.

7:00p Fight Night at the Great Western Forum PRMW F1, 22.
11:30p Fight Night at the Great Western Forum F1, 12.

9:00p Boxing ESPN E4, 8

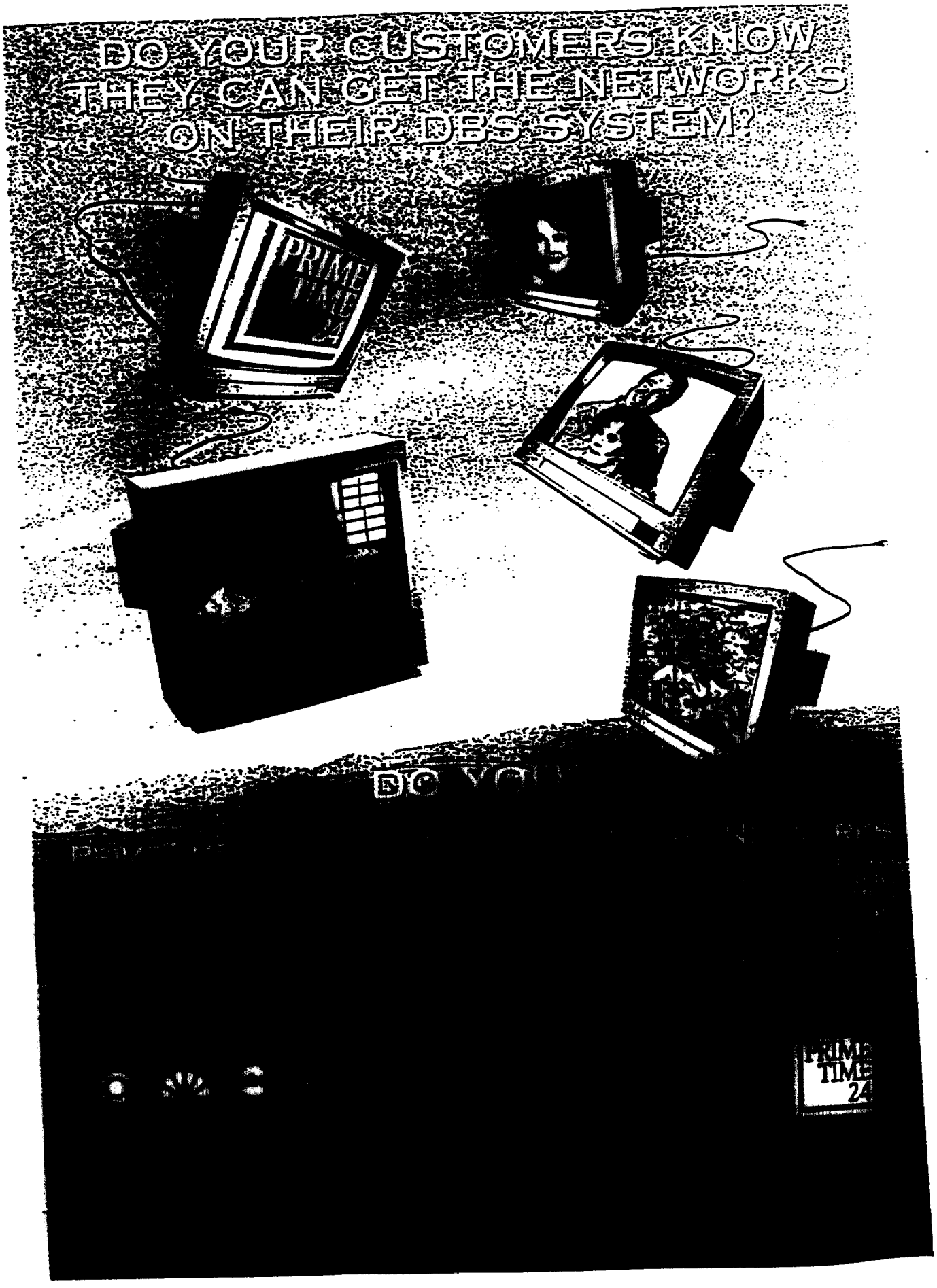
8:00p Boxing GMAF A1, 16.
10:00p Roy Jones Jr. vs. Tony Thornton HBO-E E4, 16 HBO-W E4, 8

Amateur

4:00a Champ. PSS F1, 12.
3:00a Champ. PSS F1, 16.
4:00a Champ. PSS F1, 16.
3:00a Champ. PSS F1, 16.
2:00a Champ. PSS F1, 16.
4:00a Champ. PSS F1, 16.
3:00a Champ. PSS F1, 16.
2:00a Champ. PSS F1, 16.
3:00a Champ. PSS F1, 16.

Boxing Misc.

3:30p Main Event PSS F1, 16.
12:30a World Toughman Competition – Midwest Regional PRMW F1, 16.
3:30p Main Event PSS F1, 16.
3:30p Main Event PSS F1, 16.
3:30p Main Event PSS F1, 16.
3:30p Main Event PSS F1, 16.
11:30p Main Event PSS F1, 16.
3:30p Main Event PSS F1, 16.
8:00p World Toughman Competition – SW Champ. F2, 11.
11:00p World Toughman Competition – Southwestern Regional F1, 24.
11:30p Main Event PSS F1, 16.
3:30p Main Event PSS F1, 16.
3:30p Main Event PSS F1, 16.
3:30p Main Event PSS F1, 16.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PRIME TIME 24
PRIME TIME 24

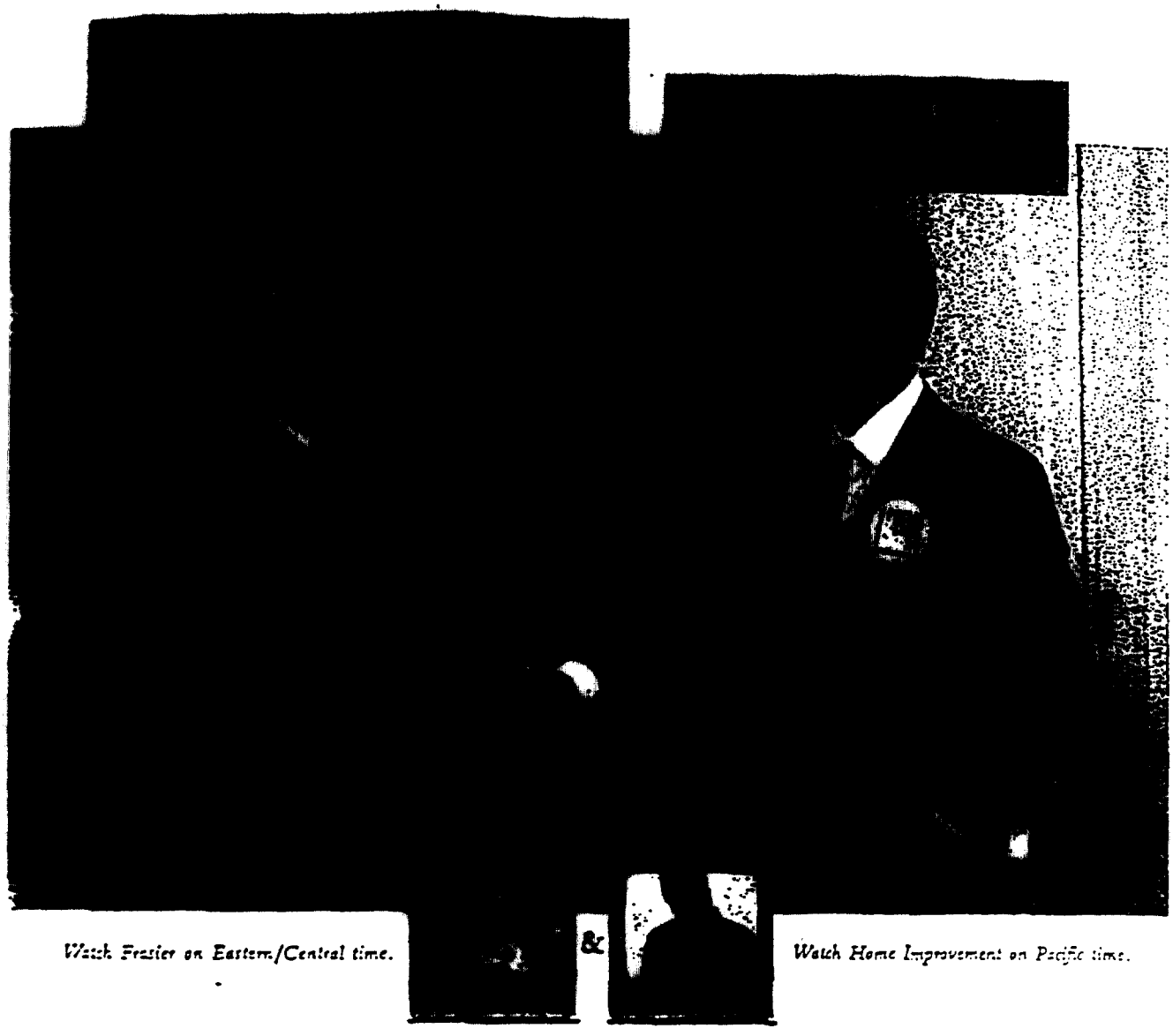

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EXHIBIT B

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